

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL: SB 870

INTRODUCER: Senator Aronberg and others

SUBJECT: Statutes of Limitation/Sexual Battery

DATE: April 14, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Daniell</u>	<u>Maclure</u>	<u>JU</u>	Favorable
3.	<u>Butler</u>	<u>Sadberry</u>	<u>JA</u>	Favorable
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill eliminates the civil and criminal statutes of limitation in cases of sexual battery when the victim is under the age of 16 at the time of the offense. The bill applies to all actions except those which would have been time barred on or before the effective date of the bill.

This bill substantially amends sections 95.11 and 775.15, Florida Statutes.

II. Present Situation:

Statutes of Limitation in Criminal Cases

Section 775.15, F.S., sets forth time limitations for commencing criminal prosecutions, commonly known as “statutes of limitation.”

There were no statutes of limitation at common law. Rather, statutes of limitation are a statutory creation.¹

In *State v. Hickman*, the court stated:

Statutes of limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to

¹ *State v. McCloud*, 67 So. 2d 242, 243 (Fla. 1953).

ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.²

The time for prosecution of a criminal case starts to run on the day after the offense is committed.³ An offense is deemed to have been committed when either every element of the offense has occurred, or, if the legislative purpose is to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's duplicity therein is terminated.⁴

Section 775.15, F.S., provides the following general time limitations for initiating a criminal prosecution:⁵

Offense	Action must be Commenced
Capital felony, life felony, or felony resulting in death	There is no time limitation
First-degree felony	Within four years after crime is committed
Any other felony	Within three years after crime is committed
First-degree misdemeanor	Within two years after crime is committed
Second-degree misdemeanor	Within one year after crime is committed

Florida law also deviates from the general time limitations for specific crimes. For example, for prosecutions involving securities transaction violations (ch. 517, F.S.), Medicaid provider fraud (s. 409.920, F.S.), insurance fraud by an employer (s. 440.105, F.S.), filing a false insurance claim (s. 817.234, F.S.), felony abuse against elderly persons or disabled adults (s. 825.102, F.S.), and environmental control felony violations (ch. 403, F.S.), the action must be brought within five years after the crime was committed.⁶

Section 775.15, F.S., also provides separate statutes of limitation, in certain situations, for violations of the sexual battery statute, the lewd or lascivious behavior statute, the incest statute, or the computer pornography statute. Specifically, if a victim of one of these acts is under the age of 18, the applicable period of limitation does not begin to run until the victim has reached the age of 18 or the violation is reported to a law enforcement or governmental agency, whichever occurs first.⁷ Moreover, if the offense is a first-degree felony violation of the sexual battery statute, and the victim is under the age of 18 at the time the offense was committed, prosecution of the offense may be commenced at any time.⁸ For other victims of sexual battery, whether they are under the age of 18 or not, if the offense is a first- or second-degree felony and the victim

² *State v. Hickman*, 189 So. 2d 254, 262 (Fla. 2d DCA 1966).

³ Section 775.15(3), F.S.

⁴ *Id.*

⁵ See s. 775.15(1) and (2), F.S.

⁶ Section 775.15(8)-(11), F.S.

⁷ Section 775.15(13)(a), F.S.

⁸ Section 775.15(13)(b), F.S.

reports the offense within 72 hours after its commission, the prosecution may be commenced at any time.⁹

In addition to the time periods generally prescribed for an offense, if the offense is one of sexual battery or lewd or lascivious acts, an offender may be prosecuted within one year after the date on which his or her identity is established, or should have been established through the exercise of due diligence, through the analysis of DNA evidence.¹⁰

Similarly, an offender may be prosecuted *at any time* after the date on which his or her identity is established, or should have been established through the exercise of due diligence, through the analysis of DNA evidence if accused of the following crimes:

- Aggravated battery or any felony battery;
- Kidnapping or false imprisonment;
- Sexual battery;
- Lewd or lascivious behavior;
- Burglary;
- Robbery;
- Carjacking; or
- Aggravated child abuse.¹¹

Under current law, it appears that in many situations there is no time limitation for beginning a prosecution of sexual battery crimes where the victim is a minor.

Statutes of Limitation in Civil Cases

Section 95.031, F.S., provides that the time within which an action commences under any statute of limitation runs from the time that the cause of action accrues. A cause of action accrues when the last element constituting the cause of action occurs. Time limitations may be tolled under certain circumstances.¹² In an action for recovery of damages based upon a theory of intentional tort, the action must commence within four years.¹³

In a case where the action is specifically based upon abuse or incest,¹⁴ the action must commence within seven years of the victim reaching age 18, or within four years after the injured person leaves the dependency of the abuser or of the discovery by the injured person of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.¹⁵ This time limitation is the statutory application of the “delayed discovery doctrine.” In *Hearndon v.*

⁹ Section 775.15(13)(a) and (14), F.S.

¹⁰ Section 775.15(15), F.S.

¹¹ Section 775.15(16), F.S.

¹² See s. 95.051, F.S.

¹³ Section 95.11(3)(o), F.S.

¹⁴ Incest is defined in s. 826.04, F.S., as sexual intercourse with a person to whom the perpetrator is related by lineal consanguinity, or a brother, sister, uncle, aunt, nephew, or niece. Abuse of a child is defined in ss. 39.01 and 984.03, F.S., as any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired.

¹⁵ Section 95.11(7), F.S.

Graham, 767 So. 2d 1179 (Fla. 2000), the Florida Supreme Court held that the delayed discovery doctrine applies in childhood sexual abuse or incest cases. This doctrine may be applied in other types of tort actions as well.

The delayed discovery doctrine provides that “a cause of action does not accrue until the plaintiff either knows or reasonably should know of the tortious act giving rise to the cause of action.”¹⁶ As the court noted, it is both the majority rule and the modern trend to apply the doctrine in cases of childhood sexual abuse followed by a temporary loss of memory.¹⁷

The court explained in *Hearndon* that there is a difference between tolling a statute of limitation and the delayed discovery doctrine. Simply, the statute of limitation begins to run from the time when the cause of action accrues. The tolling of the limitation period interrupts the running of the time limitation after the action has accrued. The application of the delayed discovery doctrine recognizes a delay in the accrual of the cause of action.¹⁸

Sexual Battery

Sexual battery is generally defined as “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.”¹⁹

It is a capital felony for a person 18 years or older to commit a sexual battery on, or in an attempt to commit a sexual battery injures the sexual organs of, a person less than 12 years of age.²⁰ It is also a capital felony (or life felony) for a person who is in a position of familial or custodial authority to a person under the age of 18 to engage in any act with that person while the person is less than 12 years of age.²¹

If a person under the age of 18 commits a sexual battery on, or in an attempt to commit a sexual battery injures the sexual organs of, a person less than 12 years of age, it is a life felony. It is also a life felony for any person to commit a sexual battery on a person 12 years of age or older and in the process use or threaten to use a deadly weapon or use actual physical force likely to cause serious personal injury.²²

It is a first-degree felony for a person to commit a sexual battery on a person 12 years of age or older when:

- The victim is physically helpless to resist;
- The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim;

¹⁶ *Hearndon*, 767 So. 2d at 1184.

¹⁷ *Id.* at 1186.

¹⁸ *Id.* at 1184-85.

¹⁹ Section 794.011(1)(h), F.S.

²⁰ Section 794.011(2)(a), F.S.

²¹ Section 794.011(8)(c), F.S.

²² Section 794.011(2)(b) and (3), F.S.

- The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person;
- The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim;
- The victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact;
- The victim is physically incapacitated; or
- The offender is a law enforcement officer, correctional officer, or correctional probation officer.²³

It is also a first-degree felony for a person who is in a position of familial or custodial authority to a person under the age of 18 to engage in any act with that person while the person is between the ages of 12 and 18.²⁴ If the offender only solicits the person under the age of 18 to engage in an act that would constitute sexual battery it is a third-degree felony.²⁵

Finally, a person who commits sexual battery upon a person 12 years of age or older and in the process does not use physical force and violence likely to cause serious person injury commits a felony of the second degree.²⁶

III. Effect of Proposed Changes:

This bill eliminates the civil statute of limitation in cases involving acts that constitute sexual battery on a minor when the victim is under the age of 16 at the time of the act. By eliminating the statute of limitations in civil causes of action, it appears that the bill will not only permit a victim to bring a lawsuit against the perpetrator at any time, but also against other entities, such as the perpetrator's employer, under the theory of respondeat superior.²⁷

The statutes of limitation applicable in criminal cases for sexual battery upon a victim under the age of 16 are also eliminated by the bill.

Finally, the bill applies to all actions except those which would have been time barred on or before the effective date of the bill.

The bill takes effect on July 1, 2010.

²³ Section 794.011(4), F.S.

²⁴ Section 794.011(8)(b), F.S.

²⁵ Section 794.011(8)(a), F.S.

²⁶ Section 794.011(5), F.S.

²⁷ Respondeat superior means "let the superior make answer" and is the doctrine that holds "an employer or principal liable for the employee's or agent's wrongful acts committed within the scope of the employment or agency." BLACK'S LAW DICTIONARY 609 (2d pocket ed. 1996).

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

“The purpose of statutes of limitations is to allow a plaintiff a reasonable time to realize the nature and extent of his injuries and file a lawsuit and, after that time passes, to bar actions and thereby relieve potential defendants of the anxiety of litigation. The appropriate length of statutes of limitations is governed by the kinds of injuries which particular causes of action protect and the speed at which they become apparent to the plaintiff.”²⁸ The statute of limitations in effect at the time the crime is committed controls.²⁹ Although it may be more difficult to prove a case after the passage of time, a defendant is still entitled to notice and a right to be heard, so there should not be any due process violations because of this bill.

The Legislature can extend the limitations period without violating ex post facto laws if it does so before prosecution is barred by the old statute and clearly indicates that the new statute is to apply to cases pending when it becomes effective.³⁰ The bill clearly provides that it applies only to actions that would not otherwise be time barred on or before the effective date of the bill, so it appears that the bill will not violate the ex post facto clause of the Florida Constitution.³¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Although it is difficult to quantify, there may be a financial impact upon a defendant for a civil suit that is brought because of the elimination of the time limitations by the bill.

²⁸ *Gannett Co., Inc. v. Anderson*, 947 So. 2d 1, 9 (Fla. 1st DCA 2006).

²⁹ *State ex rel Manucy v. Wadsworth, in and for St. Johns County*, 293 So. 2d 345, 347 (Fla. 1974).

³⁰ *See U.S. v. Richardson*, 512 F.2d 105, 106 (3rd Cir. 1975).

³¹ FLA. CONST. art. I, s. 10.

C. Government Sector Impact:

The Criminal Justice Impact Conference (conference), which provides the final, official estimate of the prison bed impact of criminal legislation, met on March 17, 2010, to consider HB 525, which is identical to this bill. According to the conference, this bill has an insignificant impact on state prison beds.³²

According to the Office of the State Courts Administrator (OSCA), the bill may increase judicial workload due to an increased number of actions being filed. Additionally, the bill may produce a positive fiscal impact due to the filing fees for the additional cases filed. However, according to OSCA, the fiscal impact is likely to be minimal for both revenue and expenditures.³³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

³² Office of Economic and Demographic Research, The Florida Legislature, *Criminal Justice Impact Conference 2010 Legislature* (Mar. 17, 2010), available at <http://edr.state.fl.us/conferences/criminaljustice/Impact/cjimpact.htm> (follow the "2010 Conference Results" link) (last visited Apr. 2, 2010).

³³ Office of the State Courts Administrator, *Judicial Impact Statement HB 525* (Jan. 13, 2010) (on file with the Senate Committee on Judiciary). House bill 525 is identical to SB 870.